

Remarks

Further and favorable reconsideration is respectfully requested in view of the foregoing amendments and following remarks.

Thus, the specification has been amended to make the changes required by the Examiner in item 3 on page 5 of the Office Action, rendering the objection to the disclosure moot.

Claim 1 has been amended to make an editorial change, i.e. to indicate that the vinyl monomer has an acid group, instead of an acid.

Claims 10 and 11 have been cancelled, thus rendering the rejection of these claims under the first paragraph of 35 U.S.C. §112 moot.

Accordingly, claim 12 has been placed in independent form, by incorporating the subject matter of claim 10 from which claim 12 depended; and similarly, claim 20 has been placed in independent form, by incorporating the subject matter of claim 11 from which claim 20 depended.

The patentability of the presently claimed invention over the disclosures of the references relied upon by the Examiner in rejecting the claims will be apparent upon consideration of the following remarks.

Thus, the rejection of claims 1-20 under 35 U.S.C. §103(a) as being unpatentable over JP 2004051649 in view of JP 2885919 or Roberts et al. is respectfully traversed.

The Examiner takes the position that the JP '649 reference is available as prior art under 35 U.S.C. §102(d). However, Applicants respectfully submit that this is not correct.

One of the requirements for a rejection under 35 U.S.C. §102(d) is that the foreign patent (or inventor's certificate) was actually granted before the U.S. filing date of the present application (MPEP 2135.01), which is October 23, 2003 (the filing date of the PCT application on which the present U.S. application is based). Patenting, within the meaning of 35 U.S.C. §102(d) does not occur upon laying open of a Japanese utility model application (Kokai or Kohyo) (MPEP 2135.01). The critical date of a foreign patent as a reference under 35 U.S.C. §102(d) is the date the patent becomes enforceable, i.e., issued, sealed or granted (MPEP 2135.01).

The JP '649 reference is the published version of JP Application No. 2002-206641 (filed July 16, 2002 as noted by the Examiner). [An Official Gazette is published for each Japanese patent application about 18 months after the filing date of the application.] However, no enforceable patent rights have yet been conferred for the invention described in the JP '649 reference.

In view of these considerations, Applicants take the position that the JP '649 reference is not available as prior art under 35 U.S.C. §102(d).

The rejection set forth by the Examiner is based on a combination of JP '649 in view of the secondary references. Since JP '649 is not available as prior art against the present application, the rejection should be withdrawn, for this reason alone, without any necessity to discuss either of the secondary references.

Therefore, in view of the foregoing amendments and remarks, it is submitted that each of the grounds of objection and rejection set forth by the Examiner has been overcome, and that the application is in condition for allowance. Such allowance is solicited.

Respectfully submitted,

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